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Committee on Economic, Social and Cultural Rights

General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*

I. Introduction

1. Businesses play an important role in the realization of economic, social and cultural rights, inter alia by contributing to the creation of employment opportunities and — through private investment — to development. However, the Committee on Economic, Social and Cultural Rights has been regularly presented with situations in which, as a result of States' failure to ensure compliance, under their jurisdiction, with internationally recognized human rights norms and standards, corporate activities have negatively affected economic, social and cultural rights. The present general comment seeks to clarify the duties of States parties to the International Covenant on Economic, Social and Cultural Rights in such situations, with a view to preventing and addressing the adverse impacts of business activities on human rights.

2. The Committee has previously considered the growing impact of business activities on the enjoyment of specific Covenant rights relating to health,[1] housing,[2] food,[3] water,[4] social security,[5] the right to work,[6] the right to just and favourable conditions of work[7] and the right to form and join trade unions.[8] In addition, the Committee has addressed the issue in concluding observations[9] on States parties' reports, and in its first decision on an individual communication.[10] In 2011, it adopted a statement on State obligations related to corporate responsibilities in the context of the Covenant rights.[11] The present general comment should be read together with these earlier contributions. It also takes into account

* Adopted by the Committee on Economic, Social and Cultural Rights at its sixty-first session (29 May–23 June 2017).

[1] See the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 26 and 35.

[2] See the Committee's general comment No. 4 (1991) on the right to adequate housing, para. 14.

[3] See the Committee's general comment No. 12 (1999) on the right to adequate food, paras. 19 and 20.

[4] See the Committee's general comment No. 15 (2002) on the right to water, para. 49.

[5] See the Committee's general comment No. 19 (2007) on the right to social security, paras. 45, 46 and 71.

[6] See the Committee's general comment No. 18 (2005) on the right to work, para. 52.

[7] See the Committee's general comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 74 and 75.

[8] See E/C.12/AZE/CO/3, para. 15.

[9] See E/C.12/CAN/CO/6, paras. 15 and 16, E/C.12/VNM/CO/2-4, paras. 22 and 29, and E/C.12/EST/CO/3, paras. 9-11.

[10] Communication No. 2/2014, *I.D.G. v. Spain*, Views adopted on 17 June 2015.

[11] See E/C.12/2011/1, para. 7.

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advances within the International Labour Organization[12] and within regional organizations such as the Council of Europe.[13] In adopting the present general comment, the Committee has considered the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2011,[14] as well as the contributions made to this issue by human rights treaty bodies and various special procedures.[15]

II. Context and scope

3. For the purposes of the present general comment, business activities include all activities of business entities, whether they operate transnationally or their activities are purely domestic, whether they are fully privately owned or State-owned, and regardless of their size, sector, location, ownership and structure.

4. In certain jurisdictions, individuals enjoy direct recourse against business entities for violations of economic, social and cultural rights, whether in order to impose on such private entities (negative) duties to refrain from certain courses of conduct or to impose (positive) duties to adopt certain measures or to contribute to the fulfilment of such rights.[16] There are also a large number of domestic laws designed to protect specific economic, social and cultural rights, that apply directly to business entities, such as in the areas of non-discrimination, health-care provision, education, the environment, employment relations and consumer safety.

5. In addition, under international standards, business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice.[17] The present general comment therefore also seeks to assist the corporate sector in discharging their human rights obligations and assuming their responsibilities, thus mitigating any reputational risks that may be associated with violations of Covenant rights within their sphere of influence.

6. The present general comment could also assist workers' organizations and employers in the context of collective bargaining. A large number of States parties require workplace procedures for the examination of grievances brought by workers, individually or collectively, without threat of reprisal.[18] Social dialogue and the availability of grievance mechanisms for workers could be more systematically relied upon, particularly for the implementation of articles 6 and 7 of the Covenant.

III. Obligations of States parties under the Covenant

A. Obligations of non-discrimination

7. The Committee has previously underlined that discrimination in the exercise of economic, social and cultural rights is frequently found in private spheres, including in

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[12] The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, initially adopted in 1977 and last revised in 2017, encourages positive contributions by enterprises to society for implementation of the principles underlying international labour standards.

[13] See recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe, on human rights and business, adopted on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

[14] See A/HRC/17/31, endorsed by the Human Rights Council in its resolution 17/4.

[15] See A/HRC/4/35/Add.1.

[16] See, for example, the Constitutional Court of South Africa, *Daniels v. Scribante and others*, case CCT 50/16, judgment of 11 May 2017, paras. 37-39 (leading judgment by J. Madlanga) (positive duties imposed on the owner to ensure the right to security of tenure in conditions that comply with the requirements of human dignity).

[17] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, principle 11 and commentary.

[18] See the ILO Examination of Grievances Recommendation, 1967 (No. 130).

workplaces and the labour market[19] and in the housing and lending sectors.[20] Under articles 2 and 3 of the Covenant, States parties have the obligation to guarantee the enjoyment of Covenant rights to all without discrimination.[21] The requirement to eliminate formal as well as substantive forms of discrimination[22] includes a duty to prohibit discrimination by non-State entities in the exercise of economic, social and cultural rights.

8. Among the groups that are often disproportionately affected by the adverse impact of business activities are women, children, indigenous peoples, particularly in relation to the development, utilization or exploitation of lands and natural resources,[23] peasants, fisherfolk and other people working in rural areas, and ethnic or religious minorities where these minorities are politically disempowered. Persons with disabilities are also often disproportionately affected by the negative impacts of business activities, in particular because they face particular barriers in accessing accountability and remedy mechanisms. As noted by the Committee on previous occasions, asylum seekers and undocumented migrants are at particular risk of facing discrimination in the enjoyment of Covenant rights due to their precarious situation, and under article 7 of the Covenant, migrant workers are particularly vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments.[24]

9. Certain segments of the population face a greater risk of suffering intersectional and multiple discrimination.[25] For instance, investment-linked evictions and displacements often result in physical and sexual violence against, and inadequate compensation and additional burdens related to resettlement for, women and girls.[26] In the course of such investment-linked evictions and displacements, indigenous women and girls face discrimination both due to their gender and because they identify as indigenous people. In addition, women are overrepresented in the informal economy and are less likely to enjoy labour-related and social security protections.[27] Furthermore, despite some improvement, women continue to be underrepresented in corporate decision-making processes worldwide.[28] The Committee therefore recommends that States parties address the specific impacts of business activities on women and girls, including indigenous women and girls, and incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights, including by consulting the Guidance on National Action Plans on Business and Human Rights.[29] States parties should also take appropriate steps, including through temporary special measures, to improve women's representation in the labour market, including at the upper echelons of the corporate hierarchy.

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[19] See, for example, the Committee's general comment No. 18, paras. 13 and 14; the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 32; the Committee's general comment No. 6 (1995) on the economic, social and cultural rights of older persons, para. 22; and the Committee's general comment No. 4, para. 8 (e).

[20] See the Committee's general comment No. 4, para. 17, and general comment No. 20, para. 11.

[21] See the Committee's general comment No. 20, paras. 7 and 8.

[22] Ibid., paras. 8 and 11.

[23] See the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295, annex, art. 32 (2)).

[24] See E/C.12/2017/1 for the Committee's statement on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights; and the Committee's general comment No. 23, para. 47 (e).

[25] See the Committee's general comment No. 20, para. 17.

[26] Office of the United Nations High Commissioner for Human Rights (OHCHR) and United Nations Human Settlements Programme (UN-Habitat), *Forced Evictions*, Fact Sheet No. 25/Rev.1 (2014), p. 16.

[27] See A/HRC/26/39, paras. 48-50. See also the guidance to States on how to adopt measures to promote workers' rights and social protection in the informal economy while encouraging a transition to the formal economy, provided in the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

[28] See A/HRC/26/39, paras. 57-62.

[29] By the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group on Business and Human Rights) (November 2016).

B. Obligations to respect, to protect and to fulfil

10. The Covenant establishes specific obligations of States parties at three levels — to respect, to protect and to fulfil. These obligations apply both with respect to situations on the State's national territory, and outside the national territory in situations over which States parties may exercise control. The extraterritorial components of the obligations are addressed separately in subsection III. C below. That section clarifies the content of States' obligations, focusing on their duties to protect, which are the most relevant in the context of business activities.

11. The present general comment addresses the States parties to the Covenant, and in that context it only deals with the conduct of private actors — including business entities — indirectly. In accordance with international law, however, States parties may be held directly responsible for the action or inaction of business entities: (a) if the entity concerned is in fact acting on that State party's instructions or is under its control or direction in carrying out the particular conduct at issue,[30] as may be the case in the context of public contracts;[31] (b) when a business entity is empowered under the State party's legislation to exercise elements of governmental authority;[32] or if the circumstances call for such exercise of governmental functions in the absence or default of the official authorities;[33] or (c) if and to the extent that the State party acknowledges and adopts the conduct as its own.[34]

1. Obligation to respect

12. The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects.[35] Indigenous peoples' cultural values and rights associated with their ancestral lands are particularly at risk.[36] States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.[37]

13. States parties should identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist,[38] as required under the principle of the binding character of treaties.[39] The conclusion of such treaties should therefore be preceded by human rights impact assessments that take into account both the positive and negative human rights impacts of trade and investment treaties, including the contribution of such treaties to the realization of the right to development. Such impacts on human rights of the implementation of the agreements should be regularly assessed, to allow for the adoption of

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[30] See A/56/10 for articles on responsibility of States for internationally wrongful acts, with commentaries adopted by the International Law Commission, art. 8. See also General Assembly resolutions 56/83, 59/35, 62/61, 65/19 and 68/104.

[31] In particular, the responsibility of the State may be engaged if it fails to include labour clauses in public contracts to ensure the appropriate protection of workers employed by private contractors awarded such contracts. In this regard, States are referred to the ILO Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and the ILO Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84).

[32] Articles on responsibility of States for internationally wrongful acts, art. 5.

[33] Ibid., art. 9.

[34] Ibid., art. 11.

[35] See the Committee's general comment No. 7 (1997) on forced evictions, paras. 7 and 18, and OHCHR and UN-Habitat, *Forced Evictions*, Fact Sheet No. 25/Rev.1, pp. 28 and 29. See also, for example, A/HRC/25/54/Add.1, paras. 55 and 59-63.

[36] See the Committee's general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 36. See also the United Nations Declaration on the Rights of Indigenous Peoples, art. 26.

[37] See the United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 19, 28, 29 and 32.

[38] See A/HRC/19/59/Add.5. See also recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe, appendix, para. 23.

[39] See the Vienna Convention on the Law of Treaties, arts. 26 and 30 (4) (b).

any corrective measures that may be required. The interpretation of trade and investment treaties currently in force should take into account the human rights obligations of the State, consistent with Article 103 of the Charter of the United Nations and with the specific nature of human rights obligations.[40] States parties cannot derogate from the obligations under the Covenant in trade and investment treaties that they may conclude. They are encouraged to insert, in future treaties, a provision explicitly referring to their human rights obligations, and to ensure that mechanisms for the settlement of investor-State disputes take human rights into account in the interpretation of investment treaties or of investment chapters in trade agreements.

2. Obligation to protect

14. The obligation to protect means that States parties must prevent effectively infringements of economic, social and cultural rights in the context of business activities. This requires that States parties adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against Covenant rights violations linked to business activities, and that they provide victims of such corporate abuses with access to effective remedies.

15. States parties should consider imposing criminal or administrative sanctions and penalties, as appropriate, where business activities result in abuses of Covenant rights or where a failure to act with due diligence to mitigate risks allows such infringements to occur; enable civil suits and other effective means of claiming reparations by victims of rights violations against corporate perpetrators, in particular by lowering the costs to victims and by allowing forms of collective redress; revoke business licences and subsidies, if and to the extent necessary, from offenders; and revise relevant tax codes, public procurement contracts,[41] export credits and other forms of State support, privileges and advantages in case of human rights violations, thus aligning business incentives with human rights responsibilities. States parties should regularly review the adequacy of laws and identify and address compliance and information gaps, as well as emerging problems.[42]

16. The obligation to protect entails a positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights.[43] States should adopt measures such as imposing due diligence requirements to prevent abuses of Covenant rights in a business entity's supply chain and by subcontractors, suppliers, franchisees, or other business partners.

17. States parties should ensure that, where appropriate, the impacts of business activities on indigenous peoples specifically (in particular, actual or potential adverse impacts on indigenous peoples' rights to land, resources, territories, cultural heritage, traditional knowledge and culture) are incorporated into human rights impact assessments.[44] In exercising human rights due diligence, businesses should consult and cooperate in good faith with the indigenous peoples concerned through indigenous peoples' own representative institutions in order to obtain their free, prior and informed consent before

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[40] Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay* (judgment of 29 March 2006, Series C No. 146), para. 140.

[41] See the conclusions attached to the resolution concerning decent work in global supply chains, adopted by the General Conference of the International Labour Organization at its 105th session, para. 16 (c).

[42] Guiding Principles on Business and Human Rights, principle 17 (c). See A/HRC/32/19.Add.1, para. 5, for the model terms of reference for a review of the coverage and effectiveness of laws relevant to business-related human rights abuses; and A/HRC/32/19, annex, for the guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse. See also Human Rights Council resolution 32/10.

[43] Guiding Principles on Business and Human Rights, principles 15 and 17.

[44] See A/68/279, para. 31; A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples, p. 15; A/HRC/33/42; and A/66/288, paras. 92-102.

the commencement of activities.[45] Such consultations should allow for identification of the potentially negative impact of the activities and of the measures to mitigate and compensate for such impact. They should also lead to design mechanisms for sharing the benefits derived from the activities, since companies are bound by their duty to respect indigenous rights to establish mechanisms that ensure that indigenous peoples share in the benefits generated by the activities developed on their traditional territories.[46]

18. States would violate their duty to protect Covenant rights, for instance, by failing to prevent or to counter conduct by businesses that leads to such rights being abused, or that has the foreseeable effect of leading to such rights being abused, for instance through lowering the criteria for approving new medicines,[47] by failing to incorporate a requirement linked to reasonable accommodation of persons with disabilities in public contracts, by granting exploration and exploitation permits for natural resources without giving due consideration to the potential adverse impacts of such activities on the individual and on communities' enjoyment of Covenant rights, by exempting certain projects or certain geographical areas from the application of laws that protect Covenant rights, or by failing to regulate the real estate market and the financial actors operating on that market so as to ensure access to affordable and adequate housing for all.[48] Such violations are facilitated where insufficient safeguards exist to address corruption of public officials or private-to-private corruption, or where, as a result of corruption of judges, human rights abuses are left unremedied.

19. The obligation to protect sometimes necessitates direct regulation and intervention. States parties should consider measures such as restricting marketing and advertising of certain goods and services in order to protect public health,[49] such as of tobacco products, in line with the Framework Convention on Tobacco Control,[50] and of breast-milk substitutes, in accordance with the 1981 International Code of Marketing of Breast-milk Substitutes and subsequent resolutions of the World Health Assembly;[51] combating gender role stereotyping and discrimination;[52] exercising rent control in the private housing market as required for the protection of everyone's right to adequate housing;[53] establishing a minimum wage consistent with a living wage and a fair remuneration;[54] regulating other business activities concerning the Covenant rights to education, employment and reproductive health, in order to combat gender discrimination effectively;[55] and gradually eliminating informal or "non-standard" (i.e. precarious) forms of employment, which often result in denying the workers concerned the protection of labour laws and social security.

20. Corruption constitutes one of the major obstacles to the effective promotion and protection of human rights, particularly as regards the activities of businesses.[56] It also undermines a State's ability to mobilize resources for the delivery of services essential for the realization of economic, social and cultural rights. It leads to discriminatory access to public services in favour of those able to influence authorities, including by offering bribes

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[45] A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples, p. 16; and the United Nations Declaration on the Rights of Indigenous Peoples, art. 19.

[46] See A/66/288, para. 102.

[47] See A/63/263 and A/HRC/11/12.

[48] See A/HRC/34/51, paras. 62-66.

[49] See the Convention on the Rights of the Child; Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 14, 19, 20, 56 and 57; World Health Organization, *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* (2010); and World Health Organization, *A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* (2012).

[50] Of the World Health Organization.

[51] See A/HRC/19/59, para. 16.

[52] See the Convention on the Elimination of All Forms of Discrimination against Women, art. 5.

[53] See the Committee's general comment No. 4, para. 8 (c).

[54] See the Committee's general comment No. 23, paras. 10-16 and 19-24.

[55] See the Convention on the Elimination of All Forms of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 13.

[56] See Human Rights Council resolution 23/9 and General Assembly resolution A/RES/69/199.

or resorting to political pressure. Therefore, whistle-blowers should be protected,[57] and specialized mechanisms against corruption should be established, their independence should be guaranteed and they should be sufficiently well resourced.

21. The increased role and impact of private actors in traditionally public sectors, such as the health or education sector, pose new challenges for States parties in complying with their obligations under the Covenant. Privatization is not per se prohibited by the Covenant, even in areas such as the provision of water or electricity, education or health care where the role of the public sector has traditionally been strong. Private providers should, however, be subject to strict regulations that impose on them so-called "public service obligations": in the provision of water or electricity, this may include requirements concerning universality of coverage and continuity of service, pricing policies, quality requirements, and user participation.[58] Similarly, private health-care providers should be prohibited from denying access to affordable and adequate services, treatments or information. For instance, where health practitioners are allowed to invoke conscientious objection to refuse to provide certain sexual and reproductive health services, including abortion, they should refer the women or girls seeking such services to another practitioner within reasonable geographical reach who is willing to provide such services.[59]

22. The Committee is particularly concerned that goods and services that are necessary for the enjoyment of basic economic, social and cultural rights may become less affordable as a result of such goods and services being provided by the private sector, or that quality may be sacrificed for the sake of increasing profits. The provision by private actors of goods and services essential for the enjoyment of Covenant rights should not lead the enjoyment of Covenant rights to be made conditional on the ability to pay, which would create new forms of socioeconomic segregation. The privatization of education illustrates such a risk, where private educational institutions lead to high-quality education being made a privilege affordable only to the wealthiest segments of society, or where such institutions are insufficiently regulated, providing a form of education that does not meet minimum educational standards while giving a convenient excuse for States parties not to discharge their own duties towards the fulfilment of the right to education.[60] Nor should privatization result in excluding certain groups that historically have been marginalized, such as persons with disabilities. States thus retain at all times the obligation to regulate private actors to ensure that the services they provide are accessible to all, are adequate, are regularly assessed in order to meet the changing needs of the public and are adapted to those needs. Since privatization of the delivery of goods or services essential to the enjoyment of Covenant rights may result in a lack of accountability, measures should be adopted to ensure the right of individuals to participate in assessing the adequacy of the provision of such goods and services.

3. Obligation to fulfil

23. The obligation to fulfil requires States parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights, and, in certain cases, to directly provide goods and services essential to such enjoyment. Discharging such duties may require the mobilization of resources by the State,

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[57] See the conclusions attached to the resolution concerning decent work in global supply chains, adopted by the General Conference of the International Labour Organization at its 105th session, para. 16 (g).

[58] See, for example, Human Rights Council resolution 15/9.

[59] See the Committee's general comment No. 22 (2016) on the right to sexual and reproductive health, paras. 14, 42, 43 and 60.

[60] See, for example, E/C.12/CHL/CO/4, para. 30; and A/69/402. Of course, important though it is, appropriate regulation of the providers of educational services should respect academic freedom and "the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions" (art. 13 (3) of the Covenant). As regards primary education, States parties must ensure not only that it is affordable, but that it is free, as required by arts. 13 (2) (a) and 14 of the Covenant.

including by enforcing progressive taxation schemes. It may require seeking business cooperation and support to implement the Covenant rights and comply with other human rights standards and principles.

24. This obligation also requires directing the efforts of business entities towards the fulfilment of Covenant rights. In designing a framework on intellectual property rights, for instance, that is consistent with the Universal Declaration of Human Rights and with the right to enjoy the benefits of scientific progress stipulated in article 15 of the Covenant, States parties should ensure that intellectual property rights do not lead to denial or restriction of everyone's access to essential medicines necessary for the enjoyment of the right to health,[61] or to productive resources such as seeds, access to which is crucial to the right to food and to farmers' rights.[62] States parties should also recognize and protect the right of indigenous peoples to control the intellectual property over their cultural heritage, traditional knowledge and traditional cultural expressions.[63] In supporting research and development for new products and services, States parties should aim at the fulfilment of Covenant rights, for instance by supporting the development of universally designed goods, services, equipment and facilities, to advance the inclusion of persons with disabilities.

C. Extraterritorial obligations

25. The past thirty years have witnessed a significant increase of activities of transnational corporations, growing investment and trade flows between countries, and the emergence of global supply chains. In addition, major development projects have increasingly involved private investments, often in the form of public-private partnerships between State agencies and foreign private investors. These developments give particular significance to the question of extraterritorial human rights obligations of States.

26. In its 2011 statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights, the Committee reiterated that States parties' obligations under the Covenant did not stop at their territorial borders. States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.[64] The Committee has also addressed specific extraterritorial obligations of States parties concerning business activities in its previous general comments relating to the right to water,[65] the right to work,[66] the right to social security,[67] and the right to just and favourable conditions of work,[68] as well as in its examination of States' periodic reports.

27. Such extraterritorial obligations of States under the Covenant follow from the fact that the obligations of the Covenant are expressed without any restriction linked to territory or jurisdiction. Although article 14 of the Covenant does refer to compulsory primary education having to be provided by a State "in its metropolitan territory or other territories under its jurisdiction", such a reference is absent from the other provisions of the Covenant. Moreover, article 2 (1) refers to international assistance and cooperation as a means of fulfilling economic, social and cultural rights. It would be contradictory to such a reference to allow a State to remain passive where an actor domiciled in its territory and/or under its

[61] See also A/HRC/23/42, para. 3 (recognizing the obligation to provide essential medicines as an immediate obligation for all States parties).

[62] See A/64/170, paras. 5 and 7; and the International Treaty on Plant Genetic Resources for Food and Agriculture (resolution 3/2001, adopted on 3 November 2001, FAO Conference, thirty-first session), art. 9.

[63] See the United Nations Declaration on the Rights of Indigenous Peoples, arts. 24 and 31; and the Committee's general comment No. 21, para. 37.

[64] See E/C.12/2011/1, paras. 5 and 6.

[65] See the Committee's general comment No. 15, paras. 31 and 33.

[66] See the Committee's general comment No. 18, para. 52.

[67] See the Committee's general comment No. 19, para. 54.

[68] See the Committee's general comment No. 23, para. 70.

jurisdiction, and thus under its control or authority, harmed the rights of others in other States, or where conduct by such an actor may lead to foreseeable harm being caused. Indeed, the Members of the United Nations have pledged "to take joint and separate action in cooperation with the Organization" to achieve the purposes set forth in article 55 of the Charter, including "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".[69] This duty is expressed without any territorial limitation, and should be taken into account when addressing the scope of States' obligations under human rights treaties. Also in line with the Charter, the International Court of Justice has acknowledged the extraterritorial scope of core human rights treaties, focusing on their object and purpose, their legislative history and the lack of territorial limitation provisions in the text.[70] Customary international law also prohibits a State from allowing its territory to be used to cause damage on the territory of another State, a requirement that has gained particular relevance in international environmental law.[71] The Human Rights Council has confirmed that such prohibition extends to human rights law, when it endorsed the guiding principles on extreme poverty and human rights, in its resolution 21/11.[72]

28. Extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory.[73] In that regard, the Committee also takes note of general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, of the Committee on the Rights of the Child,[74] as well as of the positions adopted by other human rights treaty bodies.[75]

1. Extraterritorial obligation to respect

29. The extraterritorial obligation to respect requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. As part of that obligation, States parties must ensure that they do

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[69] Charter of the United Nations, Article 56.

[70] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports (2004)*, paras. 109-112.

[71] *Trail Smelter* case *(United States of America v. Canada), Reports of International Arbitral Awards*, vol. 3 (1941), p. 1965; International Court of Justice, *Corfu Channel* case *(United Kingdom of Great Britain and Northern Ireland v. Albania) (Merits), I.C.J. Reports*, vol. 4 (9 April 1949), para. 22, and International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports* (8 July 1996), para. 29. See also A/61/10, draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, adopted at the fifty-eighth session of the International Law Commission, in 2006 (in particular principle 4, stipulating that "each State should take all necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control"). The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, adopted by a range of academics, research institutes and human rights non-governmental organizations in 2011, provide a restatement of the current state of international human rights law on this topic, contributing to its progressive development.

[72] Resolution 21/11 endorsed the final draft of the guiding principles on extreme poverty and human rights (see A/HRC/21/39), which provide, in para. 92, that "as part of international cooperation and assistance, States have an obligation to respect and protect the enjoyment of human rights, which involves avoiding conduct that would create a foreseeable risk of impairing the enjoyment of human rights by persons living in poverty beyond their borders, and conducting assessments of the extraterritorial impacts of laws, policies and practices".

[73] See the Committee's general comment No. 12, para. 36; general comment No. 14, para. 39; or general comment No. 15, paras. 31-33; the Committee's general comment No. 19, para. 54; general comment No. 20, para. 14; and general comment No. 23, paras. 69 and 70; and E/C.12/2011/1, para. 5.

[74] See paras. 43 and 44.

[75] See, for example, CERD/C/NOR/CO/19-20, para. 17; and CCPR/C/DEU/CO/6, para. 16.

not obstruct another State from complying with its obligations under the Covenant.[76] This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements or of financial and tax treaties,[77] as well as to judicial cooperation.

2. Extraterritorial obligation to protect

30. The extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.

31. This obligation extends to any business entities over which States parties may exercise control, in accordance with the Charter of the United Nations and applicable international law.[78] Consistent with the admissible scope of jurisdiction under general international law, States may seek to regulate corporations that are domiciled in their territory and/or jurisdiction: this includes corporations incorporated under their laws, or which have their statutory seat, central administration or principal place of business on their national territory.[79] States parties may also utilize incentives short of the direct imposition of obligations, such as provisions in public contracts favouring business entities that have put in place robust and effective human rights due diligence mechanisms, in order to contribute to the protection of economic, social and cultural rights at home and abroad.

32. Whereas States parties would not normally be held directly internationally responsible for a violation of economic, social and cultural rights caused by a private entity's conduct (except in the three scenarios recalled in para. 11 of the present general comment), a State party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event. The responsibility of the State can be engaged in such circumstances even if other causes have also contributed to the occurrence of the violation,[80] and even if the State had not foreseen that a violation would occur, provided such a violation was reasonably foreseeable.[81] For instance, considering the well-documented risks associated with the extractive industry, particular due diligence is required with respect to mining-related projects and oil development projects.[82]

33. In discharging their duty to protect, States parties should also require corporations to deploy their best efforts to ensure that entities whose conduct those corporations may influence, such as subsidiaries (including all business entities in which they have invested, whether registered under the State party's laws or under the laws of another State) or business partners (including suppliers, franchisees and subcontractors), respect Covenant rights. Corporations domiciled in the territory and/or jurisdiction of States parties should be required to act with due diligence to identify, prevent and address abuses to Covenant rights

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[76] See the Committee's general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights; and articles on responsibility of States for internationally wrongful acts, art. 50 (countermeasures by a State or group of States in response to an internationally wrongful act by another State may not affect "obligations for the protection of fundamental human rights").

[77] See A/HRC/19/59/Add.5.

[78] See, for example, the Committee's general comment No. 14, para. 39; or general comment No. 15, paras. 31-33. The Maastricht Principles were the subject of explanatory commentaries; see Olivier De Schutter and others, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 34 (2012), pp. 1084-1171.

[79] See recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe, appendix, para. 13.

[80] International Court of Justice, *Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (judgment of 26 February 2007), *I.C.J. Reports*, paras. 430 and 461.

[81] Articles on responsibility of States for internationally wrongful acts, art. 23, commentary.

[82] See A/HRC/8/5/Add.2.

by such subsidiaries and business partners, wherever they may be located.[83] The Committee underlines that, although the imposition of such due diligence obligations does have impacts on situations located outside these States' national territories since potential violations of Covenant rights in global supply chains or in multinational groups of companies should be prevented or addressed, this does not imply the exercise of extraterritorial jurisdiction by the States concerned. Appropriate monitoring and accountability procedures must be put in place to ensure effective prevention and enforcement. Such procedures may include imposing a duty on companies to report on their policies and procedures to ensure respect for human rights, and providing effective means of accountability and redress for abuses of Covenant rights.

34. In transnational cases, effective accountability and access to remedy requires international cooperation. The Committee refers in this regard to the recommendation included in the report on accountability and access to remedy for victims of business-related human rights abuse, prepared by the Office of the United Nations High Commissioner for Human Rights at the request of the Human Rights Council,[84] that States should "take steps, using the guidance" (annexed to that report) "to improve the effectiveness of cross-border cooperation between State agencies and judicial bodies, with respect to both public and private law enforcement of domestic legal regimes".[85] The use of direct communication between law enforcement agencies for mutual assistance should be encouraged in order to provide for swifter action, particularly in the prosecution of criminal offences.

35. Improved international cooperation should reduce the risks of positive and negative conflicts of jurisdiction, which may result in legal uncertainty and in forum-shopping by litigants, or in an inability for victims to obtain redress. The Committee welcomes, in this regard, any efforts at the adoption of international instruments that could strengthen the duty of States to cooperate in order to improve accountability and access to remedies for victims of violations of Covenant rights in transnational cases. Inspiration can be found in instruments such as the International Labour Organization (ILO) Maritime Labour Convention, 2006, in force since 2013, which establishes a system of harmonized national legislation and inspections both by flag States and by port States upon complaints of seafarers on board ship when the ship comes into a foreign port; or in the ILO Domestic Workers Convention, 2011 (No. 189) and the ILO Domestic Workers Recommendation, 2011 (No. 201).

3. Extraterritorial obligation to fulfil

36. Article 2 (1) of the Covenant sets out the expectation that States parties will take collective action, including through international cooperation, in order to help fulfil the economic, social and cultural rights of persons outside of their national territories.[86]

37. Consistent with article 28 of the Universal Declaration of Human Rights,[87] this obligation to fulfil requires States parties to contribute to creating an international environment that enables the fulfilment of the Covenant rights. To that end, States parties must take the necessary steps in their legislation and policies, including diplomatic and foreign relations measures, to promote and help create such an environment. States parties should also encourage business actors whose conduct they are in a position to influence to ensure that they do not undermine the efforts of the States in which they operate to fully realize the Covenant rights — for instance by resorting to tax evasion or tax avoidance strategies in the countries concerned. To combat abusive tax practices by transnational

[83] Guiding Principles on Business and Human Rights, principle 13.

[84] See the Council's resolution 26/22.

[85] See A/HRC/32/19, paras. 24-28; and the annex to that report, for the guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse, paras. 9.1-9.7 and 10.1, and paras. 17.1-17.5 (for public law enforcement) and 18.1 and 18.2 (for private law enforcement).

[86] Olivier De Schutter and others, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights".

[87] See General Assembly resolution 217 (III) A.

corporations, States should combat transfer pricing practices and deepen international tax cooperation, and explore the possibility to tax multinational groups of companies as single firms, with developed countries imposing a minimum corporate income tax rate during a period of transition. Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights. As such, this practice is inconsistent with the duties of the States parties to the Covenant. Providing excessive protection for bank secrecy and permissive rules on corporate tax may affect the ability of States where economic activities are taking place to meet their obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights.[88]

IV. Remedies

38. In discharging their duty to protect, States parties should both create appropriate regulatory and policy frameworks and enforce such frameworks. Therefore, effective monitoring, investigation and accountability mechanisms must be put in place to ensure accountability and access to remedies, preferably judicial remedies, for those whose Covenant rights have been violated in the context of business activities. States parties should inform individuals and groups of their rights and the remedies accessible to them pertaining to the Covenant rights in the context of business activities, ensuring specifically that information and guidance, including human rights impact assessments, are accessible to indigenous peoples.[89] They also should provide businesses with relevant information, training and support, ensuring that they are made aware of the duties of the State under the Covenant.[90]

A. General principles

39. States parties must provide appropriate means of redress to aggrieved individuals or groups and ensure corporate accountability.[91] This should preferably take the form of ensuring access to independent and impartial judicial bodies: the Committee has underlined that "other means [of ensuring accountability] used could be rendered ineffective if they are not reinforced or complemented by judicial remedies".[92]

40. The guidelines on remedies for victims of gross violations of international human rights law and serious violations of international humanitarian law[93] provide useful indications as to the obligations that follow for States from the general obligation to provide access to effective remedies. In particular, States should: take all measures necessary to prevent rights violations; where such preventative measures fail, thoroughly investigate violations and take appropriate actions against alleged offenders; provide victims with effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and provide effective remedies to victims, including reparation.

41. It is imperative for the full realization of the Covenant rights that remedies be available, effective and expeditious. This requires that victims seeking redress must have prompt access to an independent public authority, which must have the power to determine

[88] See E/C.12/GBR/CO/6, paras. 16 and 17, and CEDAW/C/CHE/CO/4-5, para. 41.

[89] See the United Nations Declaration on the Rights of Indigenous Peoples, art. 14; A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples, pp. 30 and 31; and A/68/279, para. 56 (d).

[90] Guiding Principles on Business and Human Rights, principle 8.

[91] See the Committee's general comment No. 9 (1998) on the domestic application of the Covenant, para. 2.

[92] Ibid., para. 3. See also *I.D.G. v. Spain*, paras. 14 and 15.

[93] See General Assembly resolution 60/147, for the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law), art. 3 (a)-(d).

whether a violation has taken place and to order cessation of the violation and reparation to redress the harm done. Reparation can be in the form of restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition,[94] and must take the views of those affected into account. To ensure non-repetition, an effective remedy may require improvements to legislation and policies that have proven ineffective in preventing the abuses.

42. Because of how corporate groups are organized, business entities routinely escape liability by hiding behind the so-called corporate veil, as the parent company seeks to avoid liability for the acts of the subsidiary even when it would have been in a position to influence its conduct. Other barriers to effective access to remedies for victims of human rights violations by business entities include the difficulty of accessing information and evidence to substantiate claims, much of which is often in the hands of the corporate defendant; the unavailability of collective redress mechanisms where violations are widespread and diffuse; and the lack of legal aid and other funding arrangements to make claims financially viable.

43. Victims of transnational corporate abuses face specific obstacles in accessing effective remedies. In addition to the difficulty of proving the damage or establishing the causal link between the conduct of the defendant corporation located in one jurisdiction and the resulting violation in another, transnational litigation is often prohibitively expensive and time-consuming, and in the absence of strong mechanisms for mutual legal assistance, the collection of evidence and the execution in one State of judgments delivered in another State present specific challenges. In some jurisdictions, the *forum non conveniens* doctrine, according to which a court may decline to exercise jurisdiction if another forum is available to victims, may in effect constitute a barrier to the ability of victims residing in one State to seek redress before the courts of the State where the defendant business is domiciled. Practice shows that claims are often dismissed under this doctrine in favour of another jurisdiction without necessarily ensuring that victims have access to effective remedies in the alternative jurisdiction.

44. States parties have the duty to take necessary steps to address these challenges in order to prevent a denial of justice and ensure the right to effective remedy and reparation. This requires States parties to remove substantive, procedural and practical barriers to remedies, including by establishing parent company or group liability regimes, providing legal aid and other funding schemes to claimants, enabling human rights-related class actions and public interest litigation, facilitating access to relevant information and the collection of evidence abroad, including witness testimony, and allowing such evidence to be presented in judicial proceedings. The extent to which an effective remedy is available and realistic in the alternative jurisdiction should be an overriding consideration in judicial decisions relying on *forum non conveniens* considerations.[95] The introduction by corporations of actions to discourage individuals or groups from exercising remedies, for instance by alleging damage to a corporation's reputation, should not be abused to create a chilling effect on the legitimate exercise of such remedies.

45. States parties should facilitate access to relevant information through mandatory disclosure laws and by introducing procedural rules allowing victims to obtain the disclosure of evidence held by the defendant. Shifting the burden of proof may be justified where the facts and events relevant for resolving a claim lie wholly or in part within the exclusive knowledge of the corporate defendant.[96] The conditions under which the protection of trade secrets and other grounds for refusing disclosure may be invoked should be defined restrictively, without jeopardizing the right of all parties to a fair trial. Furthermore, States parties and their judicial and enforcement agencies have a duty to

[94] Ibid., part IX, "Reparation for harm suffered".

[95] See also recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe, appendix, para. 34.

[96] As already noted by the Committee in the specific context of actions alleging discrimination: see the Committee's general comment No. 20, para. 40. See also A/HRC/32/19, annex, para. 12.5 (in relation to civil cases) and para. 1.7 (in relation to criminal and quasi-criminal cases).

cooperate with one another in order to promote information-sharing and transparency and prevent the denial of justice.

46. States parties should ensure that indigenous peoples have access to effective remedies, both judicial and non-judicial, for all infringements of their individual and collective rights. These remedies should be sensitive to indigenous cultures and accessible to indigenous peoples.[97]

47. The Committee recalls that all government branches and agencies of States parties, including the judiciary and law enforcement agencies, are bound by the obligations under the Covenant. States parties should ensure that the judiciary, in particular judges and lawyers, are well informed of the obligations under the Covenant linked to business activities, and that they can exercise their functions in complete independence.

48. Finally, the Committee draws the attention of States parties to the challenges facing human rights defenders.[98] The Committee has regularly come across accounts of threats and attacks aimed at those seeking to protect their own or others' Covenant rights, particularly in the context of extractive and development projects.[99] In addition, trade union leaders, leaders of peasant movements, indigenous leaders and anti-corruption activists are often subject to the risk of harassment. States parties should take all measures necessary to protect human rights advocates and their work. They should refrain from resorting to criminal prosecution to hinder their work, or from otherwise obstructing their work.

B. Types of remedies

49. Ensuring corporate accountability for violations of Covenant rights requires reliance on various tools. The most serious violations of the Covenant should give rise to criminal liability of corporations and/or of the individuals responsible. Prosecuting authorities may have to be made aware of their role in upholding Covenant rights. Victims of violations of Covenant rights should have access to reparations where Covenant rights are at stake and whether or not criminal liability is engaged.[100]

50. States parties should also consider the use of administrative sanctions to discourage conduct by business entities that leads, or may lead, to violations of the rights under the Covenant. For instance, in their public procurement regimes, States could deny the awarding of public contracts to companies that have not provided information on the social or environmental impacts of their activities or that have not put in place measures to ensure that they act with due diligence to avoid or mitigate any negative impacts on the rights under the Covenant. Access to export credit and other forms of State support may also be denied in such circumstances, and in transnational contexts, investment treaties may deny protection to foreign investors of the other party that have engaged in conduct leading to a violation of Covenant rights.[101]

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[97] See A/68/279, paras. 50-53, and A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples, p. 81.

[98] See E/C.12/2016/2 for the Committee's statement on human rights defenders and economic, social and cultural rights. See also Human Rights Council resolution 31/32, and General Assembly resolution 53/144, for the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

[99] See, for example, E/C.12/VNM/CO/2-4, para. 11; E/C.12/1/Add.44, para. 19; E/C.12/IND/CO/5, paras. 12 and 50; E/C.12/PHL/CO/4, para. 15; E/C.12/COD/CO/4, para. 12; E/C.12/LKA/CO/2-4, para. 10; and E/C.12/IDN/CO/1, para. 28.

[100] See A/HRC/32/19, annex, for the guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse (see, in particular, policy objectives 4-8 of the guidance), as well as the Corporate Crimes Principles, developed in October 2016 by the Independent Commission of Experts established by the International Corporate Accountability Roundtable and Amnesty International.

[101] See, for example, International Centre for Settlement of Investment Disputes case No. ARB/07/26, *Urbaser S.A. and others v. Argentina* (award of 8 December 2016), paras. 1194 and 1195.

1. *Judicial remedies*

51. Violations of Covenant rights will often be remedied by an individual claim against the State, whether on the basis of the Covenant itself or on the basis of domestic constitutional or legislative provisions that incorporate the guarantees of the Covenant. However, where the violation is directly attributable to a business entity, victims should be able to sue such an entity either directly on the basis of the Covenant in jurisdictions which consider that the Covenant imposes self-executing obligations on private actors, or on the basis of domestic legislation incorporating the Covenant in the national legal order. In this regard, civil remedies play an important role in ensuring access to justice for victims of violations of Covenant rights.

52. Effective access to justice for indigenous peoples may require States parties to recognize the customary laws, traditions and practices of indigenous peoples and customary ownership over their lands and natural resources in judicial proceedings.[102] States parties should also ensure the use of indigenous languages and/or interpreters in courts and the availability of legal services and information on remedies in indigenous languages,[103] as well as providing training to court officials on indigenous history, legal traditions and customs.

2. *Non-judicial remedies*

53. While they generally should not be seen as a substitute for judicial mechanisms (which often remain indispensable for effective protection against certain violations of Covenant rights), non-judicial remedies may contribute to providing effective remedy to victims whose Covenant rights have been violated by business actors and ensuring accountability for such violations. These alternative mechanisms should be adequately coordinated with available judicial mechanisms, both in relation to the sanction and to the compensation for victims.

54. States parties should make use of a wide range of administrative and quasi-judicial mechanisms, many of which already regulate and adjudicate aspects of business activity in many States parties, such as labour inspectorates and tribunals, consumer and environmental protection agencies and financial supervision authorities. States parties should explore options for extending the mandate of these bodies or creating new ones, with the capacity to receive and resolve complaints of alleged corporate abuse of certain Covenant rights, to investigate allegations, to impose sanctions and to provide for and enforce reparations for the victims. National human rights institutions should be encouraged to establish appropriate structures within their organizations in order to monitor States' obligations with regard to business and human rights, and they could be empowered to receive claims from victims of corporate conduct.

55. State-based non-judicial mechanisms should provide effective protection for victims' rights. Where such alternative non-judicial mechanisms are established, they should also possess a number of characteristics ensuring that they are credible and can contribute effectively to the prevention of and reparation for violations;[104] their decisions should be enforceable, and such mechanisms should be accessible to all.

56. Non-judicial mechanisms for indigenous victims should be developed with the indigenous peoples concerned through their own representative institutions. As with judicial remedies, States parties should address barriers to indigenous peoples accessing the mechanism, including language barriers.[105]

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[102] See A/60/279, para. 34, and Committee on the Elimination of Racial Discrimination, general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 5 (e).

[103] A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples, p. 47; and Committee on the Elimination of Racial Discrimination, general recommendation No. 31, para. 30.

[104] See Guiding Principles on Business and Human Rights, principle 31.

[105] See A/60/279, para. 36.

57. Furthermore, non-judicial remedies should also be available in transnational settings. Examples include access by victims located outside the State's territory to that State's human rights institutions or ombudspersons as well as to complaints mechanisms established under international organizations, such as the national contact points operating under the OECD Guidelines for Multinational Enterprises.

V. Implementation

58. Ensuring that business activities are pursued in line with the requirements of the Covenant requires an ongoing effort from States parties. To support this, the national action plans or strategies that States parties are expected to adopt to ensure full realization of the Covenant rights should specifically address the question of the role of business entities in the progressive realization of Covenant rights.

59. Following the adoption of the Guiding Principles on Business and Human Rights, many States or regional organizations have adopted action plans on business and human rights.[106] This is a welcome development, particularly if such action plans set specific and concrete targets, allocate responsibilities across actors, and define the time frame and necessary means for their adoption. Action plans on business and human rights should incorporate human rights principles, including effective and meaningful participation, non-discrimination and gender equality, and accountability and transparency. Progress in implementing such action plans should be monitored, and such plans should place equal emphasis on all categories of human rights, including economic, social and cultural rights. As regards the requirement of participation in the design of such plans, the Committee recalls the fundamental role that national human rights institutions and civil society organizations can and should play in achieving the full realization of Covenant rights in the context of business activities.

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[106] See recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe, appendix, paras. 10-12.